

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA SHTRAYM
A 71 317 370

Plaintiff,

v.

MICHAEL CHERTOFF, Secretary of the U.S.
Department of Homeland Security; MICHAEL
MUKASEY, U.S. Attorney General; EMILIO T.
GONZALEZ, Director, U.S. Citizenship &
Immigration Services; RUTH A. DOROCHOFF,
District Director, U.S. Citizenship & Immigration
Services, Chicago Field Office; F. GERARD
HEINAUER, Director, Nebraska Service Center;
and ROBERT S. MUELLER, III, Director of the
Federal Bureau of Investigation,

Defendants.

FILED: MAY 6, 2008
NO. 08CV2590 TG
JUDGE GUZMAN
MAGISTRATE JUDGE COX

**PETITION FOR A WRIT OF MANDAMUS
ON NATURALIZATION APPLICATION**

NOW COMES the Petitioner, Maria Shtraym, by and through her attorney, Stanley J. Horn of Horn, Khalaf, Abuzir, Mitchell & Schmidt, and Petitions this Honorable Court pursuant to Immigration & Nationality Act (“INA”) § 336(b) and 8 U.S.C. § 1447(b), to issue a Writ of Mandamus compelling the Defendants to complete the processing of this Naturalization Application, and in support thereof, states as follows:

STATEMENT OF ACTION

1. This petition is brought to compel action on an Application for Naturalization (“N-400”) under Section 334 of the Immigration and Nationality Act properly filed with the United States Citizenship and Immigration Services (“USCIS”) by the Plaintiff. To the Plaintiff’s detriment, Defendants have failed to adjudicate the application.

JURISDICTION AND VENUE

2. This court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. § 1331; 28 U.S.C. § 1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

3. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States. This Court has jurisdiction to hear actions arising from claims that an agency or officer or employee of a government agency failed to act in its or his or her official capacity and the person to whom the duty was owed suffered a legal wrong. 5 U.S.C. § 702.

4. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction. This action is also brought due to the failure of the Defendants to perform their duty to adjudicate the Plaintiff's N-400 Application for Naturalization under Section 334 of the INA within 120 days after the examination on the Application is considered. Failure to adjudicate said Application has resulted in harm to the Plaintiff.

5. Venue is proper in the Northern District of Illinois because Plaintiff resides in the Northern District of Illinois and a substantial part of the activities complained of occurred in the Northern District of Illinois. See 8 U.S.C. § 1391(e).

PARTIES

6. Plaintiff, Maria Shtraym, who has been a Lawful Permanent Resident for more than five (5) years. She has continuously resided in the United States and has satisfied the residency requirements for Naturalization, has been a person of good moral character and has demonstrated

knowledge of the English language, U.S. government and history as required by INA § 316, 8 U.S.C. § 1427 (see Exhibit 1).

7. Defendant Michael Chertoff ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates has authority to adjudicate Naturalization Applications filed with the United States Citizenship and Immigration Services (USCIS) to accord applicants citizenship under the provisions of Section 335 of the INA, 8 U.S.C. § 1446.

8. Defendant Michael Mukasey ("Mukasey"), the Acting Attorney General of the United States, is being sued in his official capacity only. Mukasey is authorized to promulgate regulations governing the implementation and administration of the Immigration and Nationality Act pertaining to the naturalization of legal resident aliens and other qualified aliens.

9. Defendant Emilio T. Gonzalez, the Director of the United States Citizenship and Immigration Services, is being sued in his official capacity only. His Under Secretary position within the Department of Homeland Security charges him with supervisory authority over federal and contract employees who are responsible for the processing of immigration benefits.

10. Defendant Ruth Dorchoff ("Dorchoff"), the Officer-in-Charge of the USCIS Chicago Field Office, is being sued in her official capacity only. Dorchoff is in charge with supervisory authority over all of Chicago USCIS operations and USCIS agents and officers acting in their official capacity.

11. Defendant F. Gerard Heinauer ("Heinauer"), the Director of the USCIS Nebraska Service Center, is being sued in his official capacity only. Heinauer is charged with supervisory

authority over all of the Nebraska USCIS operations where Plaintiff's application is currently pending.

12. Defendant Robert S. Mueller III ("Mueller"), Director of the Federal Bureau of Investigation ("FBI"), is being sued in his official capacity only. Mueller has authority over the FBI's actions and the actions of its agents and officers. The FBI is statutorily obligated to conduct security checks on all Applications for Naturalization.

CAUSE OF ACTION

13. Plaintiff filed Form N-400, Application for Naturalization on November 5, 2004 with the USCIS pursuant to Section 334 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. § 1445 (see Exhibit 2).

14. Plaintiff followed the appropriate procedures for the Naturalization process, including having fingerprints taken in accordance with the procedures set up by the Defendants.

15. On April 4, 2005, Plaintiff completed her interview on her application for naturalization, yet in over two years the Plaintiff has not been scheduled for a swearing in (see Exhibit 1).

16. That there has not yet been a decision on Petitioner's N-400 Application, despite the fact that it has been pending since April 4, 2005 and despite numerous inquiries with USCIS.

18. That the Defendants' failure to adjudicate the Plaintiff's application for naturalization has no basis for the unconscionable delay.

PRAYER

WHEREFORE, Plaintiff prays that this Court grant her the following relief:

- A. Assume jurisdiction over the case and naturalize her;
- B. Grant her citizenship pursuant to her application for naturalization, or, alternatively, order Defendants to adjudicate her application within 60 days;

- C. Award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for failure of the Defendants to perform their duties within the statutory time period; and
- D. Such other relief at law and in equity as justice may so require.

Respectfully submitted,
MARIA SHTRAYM

BY: s/Stanley J. Horn

STANLEY J. HORN 1261614

Attorney for Plaintiff

Horn, Khalaf, Abuzir, Mitchell & Schmidt

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NOTICE OF FILING

TO: U.S. Attorney's Office
Northern District of Illinois
219 S. Dearborn Street, Suite 500
Chicago, IL 60604
Via First Class Mail

Michael Mukaey
U.S. Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Via First Class Mail

Emilio T. Gonzalez
Director, USCIS
20 Massachusetts Avenue Ave., N.W.
Washington, DC 20529
Via First Class Mail

F. Gerard Heinauer
Nebraska Service Center
P.O. Box 87400
Lincoln, NE 68501-7400
Via First Class Mail

Michael Chertoff
Office of General Counsel
U.S. Department of Homeland Security
Washington, DC 20528
Via First Class Mail

Ruth Dorochoff
District Director, USCIS Chicago Field Office
101 W. Congress Parkway
Chicago, IL 60605
Via First Class Mail

Robert S. Mueller, III
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, DC 20535-0001
Via First Class Mail

PLEASE TAKE NOTICE that on May 6, 2008, Plaintiff filed with the District Court for the Northern District of Illinois, her Petition for a Writ of Mandamus on Naturalization Application, a copy of which is hereby served upon you as indicated above.

s/Stanley J. Horn
STANLEY J. HORN 1261614
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused this Notice to be served upon the above addressed by mail service or hand delivery by 5:00 p.m. on May 6, 2008.

s/Stanley J. Horn

STANLEY J. HORN 1261614

Attorney for Plaintiff

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MAGISTRATE JUDGE COX

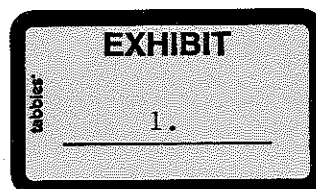
Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

On 4/4/05 MAR 2005, you were interviewed by USCIS officer [Signature] A#: 11317370

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- ☒ B) _____ A decision cannot yet be made about your application.
- It is very important that you:
- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.



UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE November 15, 2004
CASE TYPE N400 Application For Naturalization			INS A# A 071 317 370
APPLICATION NUMBER LIN*000718910	RECEIVED DATE November 05, 2004	PRIORITY DATE November 05, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS MARIA SHTRAYM 694 RIVER MILL PKWY WHEELING IL 60090		PAYMENT INFORMATION: Single Application Fee: \$390.00 Total Amount Received: \$390.00 Total Balance Due: \$0.00	
<p> </p> <p>The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):</p> <p>Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.</p> <p>08CV2590 TG JUDGE GUZMAN MAGISTRATE JUDGE COX</p> <p>Our records indicate your personal information is as follows: Date of Birth: September 03, 1978 Address Where You Live: 694 RIVER MILL PKWY WHEELING IL 60090</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p> <p>IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY</p> <p>LIN\$000672719</p>			

EXHIBIT

2.